From:	LERS, EOIR (EOIR)
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Cc:	McHenry, James (EOIR); Reilly, Katherine (EOIR); Sheehey, Kate (EOIR); Alder Reid, Lauren (EOIR); Moutinho, Deborah (EOIR); Adams, Amanda (EOIR); Pease, Jeffrey (EOIR); Morgan, Kenosha (EOIR); EOIR Library (EOIR); Macri, Andrea (EOIR)
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EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
Office of Policy | Legal Education and Research Services Division

Policy & Case Law Bulletin
September 28, 2018

Federal Agencies

DOJ

- Virtual Law Library Weekly Update — EOIR

  This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- USCIS to Begin Implementing New Policy Memorandum on Notices to Appear

  Starting October 1, 2018, USCIS will begin implementing the June 28 "Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens Policy Memorandum." USCIS may issue NTAs on denied status-impacting applications, including but not limited to, Form I-485, Application to Register Permanent Residence or Adjust Status, and Form I-539, Application to Extend/Change Nonimmigrant Status. The memorandum will not be implemented with respect to employment-based petitions and humanitarian applications and petitions at this time. The implementation of the memorandum will not impact the current processes for issuing NTAs for individuals with criminal records, fraud, or national security concerns, and USCIS will continue to prioritize these types of cases.

- USCIS Awards FY 2018 Citizenship and Assimilation Grants

  On September 24, 2018, USCIS announced the award of $9.425 million in grants to forty organizations, located in nineteen states, that prepare lawful permanent residents for naturalization. The grants also aim to promote prospective citizens' assimilation into American civic life by funding educational programs designed to increase their knowledge of English, U.S. history, and civics. These organizations will receive federal funding through September 2020.

- DHS Announces Proposed Rule on Inadmissibility on Public Charge Grounds

On September 22, 2018, the DHS announced a proposed rule prescribing how it will determine whether an alien is inadmissible to the United States under section 212(a)(4) of the Act because he or she is likely at any time to become a public charge. The proposed rule impacts aliens seeking adjustment of status or a visa, or who are applicants for admission, unless Congress has exempted them from this inadmissibility ground or otherwise permitted them to seek a waiver. The proposed rule also requires aliens seeking an extension of stay or change of status to demonstrate that they have not received, are not currently receiving, nor are likely to receive, public benefits as defined under the proposed rule.

- USCIS Proposes Revising Form I-912, Request for Fee Waiver

  USCIS published a notice in the Federal Register inviting comment on a proposed revision of Form I-912, Request for Fee Waiver. The proposed revision reduces the evidence required for Form I-912 to a person's household income. Under the proposed revision, proof of whether or not an individual receives a means-tested benefit is no longer required. The proposed revision eliminates the problem of inconsistent income levels being used to determine fee waiver eligibility, a problem that resulted from differing income levels being used by states to grant means-tested benefits. The proposed revision keeps the existing poverty-guideline threshold and financial hardship criteria.

DOS

- DOS Releases Country Reports on Terrorism 2017

  The State Department released its 2017 Country Reports on Terrorism. The reports are released annually in compliance with 22 U.S.C. § 2656(f), which requires the Department of State to provide specific reporting on global terrorism, as well as counterterrorism efforts. The forward to the report indicates that the United States and its international partners made major strides in combatting international terrorism in 2017 but that the terrorist landscape also grew more complex.

- DOS Issues Public Notice on the Diversity Immigrant Visa Program for 2020

  In a public notice dated September 25, 2018, the State Department announced that 50,000 diversity visas will be available for fiscal year 2020. The notice indicates that natives of the following countries are not eligible to apply, because more than 50,000 natives of these countries immigrated to the United States in the previous five years: Bangladesh, Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Nigeria, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam. The notice provides additional eligibility information, as well as information on the application process.

- DOS Updates 9 FAM

  The Department of State updated 9 FAM § 504.2, to memorialize the National Visa Center's (NVC) referral of fraudulent cases to the USCIS Fraud Detection and National Security Directorate rather than sending them to post for adjudication. It also revised 9 FAM § 302.11-2(B)(5), regarding applications for permission to reapply for admission, for plain language.

LOC

- CRS Issues Report - "Expedited Removal of Aliens: Legal Framework"

  The Library of Congress' Congressional Research Service issued a report for members and committees of Congress on the legal framework for the expedited removal process. In addition to the current legal framework, the report discusses constitutional and legal challenges to expedited removal, as well potential expansion of expedited removal and the legal implications.

Third Circuit

Guerrero-Sanchez v. Warden York Cnty. Prison

No. 16-4134, 2018 WL 4608970 (3d Cir. Sept. 26, 2018) (Bond)

The Third Circuit affirmed on alternative grounds the District Court's decision to afford Guerrero-Sanchez a bond hearing, concluding that Guerrero-Sanchez's detention is governed by 8 U.S.C. § 1231(a), rather than 8 U.S.C. § 1226(a), because "a reinstated order of removal against an alien who has initiated withholding-only proceedings is administratively final." Applying the canon of constitutional avoidance, the court "adopt[ed] the Ninth Circuit's limiting construction of § 1231(a)(6) [in Diouf v. Napolitano, 634 F.3d 1081 (9th Cir. 2011)] that 'an alien facing prolonged detention under [that provision] is entitled to a bond hearing before an immigration judge and is entitled to be released from detention unless the government establishes that the alien poses a risk of flight or a danger to the community.'" The court emphasized that aliens detained under § 1231(a)(6) are only entitled to a bond hearing after a prolonged detention, and "adopt[ed] a six-month rule—that is, an alien detained under § 1231(a)(6) is generally entitled to a bond hearing after six months (i.e., 180 days) of custody."

Ninth Circuit

- Myers v. Sessions

  No. 17-71416, 2018 WL 4571779 (9th Cir. Sept. 25, 2018) (Controlled Substances; Divisibility; Cancellation)
  The Ninth Circuit denied the PFR in part, upholding the Board's determination that Myers was removable based on his felony conviction under the Travel Act, 18 U.S.C. § 1952(a)(3), for traveling in interstate commerce to facilitate an unlawful activity. After considering the statutory text, the Shepard documents, pattern jury instructions, and circuit court decisions, the court concluded that the specification of "unlawful activity" is treated as an element of the offense and therefore the Travel Act is divisible. As such, the court applied the modified categorical approach to determine that the unlawful activity facilitated by Myers was "possession with intent to distribute methamphetamine," and that his conviction was for a controlled substance offense. The court granted the PFR and remanded, concluding that substantial evidence did not support the Board's determination that Myers is ineligible for cancellation of removal due to an insufficient period of presence in the United States, where "[t]he Board used the date on which the notice to appear was issued, not the date when it was served on Myers."

Eleventh Circuit

- Barton v. U.S. Attorney Gen.

  No. 17-13055, 2018 WL 4571778 (11th Cir. Sept. 25, 2018) (Cancellation)

  The Eleventh Circuit denied the PFR, affirming the Board's decision that Barton was ineligible for cancellation of removal "because the stop-time rule—triggered when he committed a crime involving moral turpitude in January 1996—ended his continuous residence a few months shy of the required seven-year period." The Court specifically considered the question of "whether a lawful-permanent-resident alien who has already been admitted to the United States—and who isn't currently seeking admission or readmission—can, for stop-time purposes, be 'render[ed] ... inadmissible' by virtue of a qualifying criminal conviction." Relying on the plain language of the stop-time provision, the Court held that a lawful permanent resident "need not be seeking admission to the Unites States in order to be 'render[ed] … inadmissible.'" In so holding the Eleventh Circuit agreed with prior decisions of the Second, Third, and Fifth Circuits, and disagreed with a recent decision by the Ninth Circuit.

- Yang v. U.S. Attorney

No. 17-14870, 2018 WL 4574817 (11th Cir. Sept. 24, 2018) (unpublished) (Asylum)

The Eleventh Circuit denied the PFR, affirming the decisions of the IJ and Board denying asylum and withholding of removal. The court determined that substantial evidence supports the finding that Yang firmly resettled in Peru before entering the U.S. based on Yang's testimony that "he lived, attended school, and worked as a businessman in Peru for twenty-five years" and that he "obtained an offer of permanent residence in Peru." Furthermore, the court concluded that the record does not compel a finding of past persecution where Yang, a participant in an underground religious service, "was not subjected to severe interrogation tactics, was not seriously injured, and was allowed to leave China without incident after his release" from eleven-day detention. The court also concluded that "the record does not compel a finding that it is more likely than not that Yang would be persecuted on account of his religion if he returned to China" based on several country reports which showed that "local authorities allow or at least do not interfere with the activities of unregistered religious groups," noting that Yang was able to leave China without incident after his detention, which occurred many years ago.

- Greer v. United States

No.17-12181, 2018 WL 4521008 (11th Cir. Sept. 20, 2018) (unpublished) (Crime of Violence)

The Eleventh Circuit affirmed the district court's decision to sentence Greer as an armed career criminal based on his three prior convictions under O.C.G.A. § 26-1307(a) (terroristic threats). "The parties agree [that O.C.G.A. § 26-1307(a)] is divisible and that, . . . Greer was convicted of 'threaten[ing] to commit any crime of violence.'" The court determined that "[b]oth the ordinary meaning of 'violence' and the holdings of Georgia courts show that only threatened violent force is criminalized under the 'crime of violence' prong" of the statute. Thus, the court held that Greer's three prior convictions constitute violent felonies under the ACCA's elements clause, 18 U.S.C. § 924(e)(2)(B)(i), which is analogous to 18 U.S.C. § 16(a).